IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6469 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IBRAHIM KHAN @ IBHO IMRAT KHANBABI

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MRS SIDDHI TALATI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner challenges the order of preventive detention dated 21st June, 1999 made by the District Magistrate, Mehsana in exercise of the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat

Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, `the Act'].

3. Alongwith the order of detention, the petitioner has been served with the grounds of detention. The grounds of detention refer to four prohibition cases registered against the petitioner during the period from 13th January, 1998 to 27th March, 1999. It appears that in each of the said offences sizeable quantity of English liquor was recovered from the petitioner. The police has also recorded statements of two witnesses who have deposed in respect of the nefarious activities carried on by the petitioner and its adverse effect on the public tranquility. The petitioner is, therefore, held to be a `bootlegger' within the meaning of Section 2 (b) of the Act and his activities are also found to be prejudicial to the maintenance of `public order'.

4. It is contended that the above referred statements of the witnesses were recorded on 16th April, 1999 and 17th April, 1999. At the relevant time, the petitioner was in custody in respect of the offence registered on 27th March, 1999. The petitioner was arrested on 11th April, 1999 and was released on 17th April, 1999. Though the aforesaid statements were available to the police, the same were not produced before the Court nor was the bail application contested on the said ground. Besides, though all the material was available with the detaining authority/sponsoring authority in the month of April, 1999, the impugned order has not been made till 21st June, 1999 i.e. for nearly two months. The said delay suggests that there was no apprehension of breach of `public order' on account of the alleged bootlegging activities of the petitioner. The order of preventive detention was, therefore, unwarranted. The delay in making the impugned order has snapped the live link with the cause of action.

5. The statements made in the petition are uncontroverted.The delay of two months in making the order of detention, after the cause of action, has not been explained in any manner. It must therefore be held that there was no imminent danger of breach of public order. The detaining authority, therefore, could not have invoked the powers of prevention detention under the Act. The impugned order has, therefore, been made without the authority of law and requires to be quashed and set-aside.

6. As a result, the order of detention dated 21st June, 1999 is quashed and set-aside. The petitioner,

unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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Prakash*